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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/821,079

04/08/2004

Anthony J. Shawan

L29-6408NP

9203

26294

7590

05/12/2006

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
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EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,079

Applicant(s)

SHAWAN ET AL.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 9 and 12-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/8/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species I in the reply filed on 4/24/06 is acknowledged. The Applicant contends that claims 1-4, 8, 10, 11 and 18-20 read on the elected species, however, claims 18-20 depend from non-elected claim 17. Accordingly, claims 1-4, 8, 10 and 11 will be examined herein and claims 5-7, 9 and 12-21 are withdrawn from further consideration.

Specification

The disclosure is objected to because of the following informalities: On page 8, line 16, "connector sections 22" should be --connector sections 32 and 34--. Further, on page 12, line 21, "rear panel 82" should be --rear panel 82a--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Obagi in view of Sage. In regard to claims 1, 10 and 11, Obagi

discloses a massaging apparatus for applying lotion to the body comprised of a lotion dispensing section having a reservoir 18 for holding lotion and a plurality of rollers 8 having an inner portion exposed to the lotion and an outer portion engageable with the user. Although the Obagi device does not disclose a pair of integrally formed handles, attention is directed to the Sage reference, which discloses another massage apparatus comprised of a lotion dispensing section and a pair of integrally formed handles 12, 14 connected to the dispensing section via "connector sections" in order to enable the device to be used to conveniently massage the back of the user. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form such handles onto the Obagi device in order to enable the device to be used to massage the back of a user. In regard to claim 2, the rollers 8 in the Obagi device are spherical and disposed in a socket connected with the lotion dispensing section. In regard to claim 3, the rollers include grooves 35 thereon (see Figure 7) for conducting the lotion from the reservoir. In regard to claim 4, the sockets in which the rollers are positioned cooperate with the rollers to control the flow rate of the lotion.

Allowable Subject Matter

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Suida, Morrison et al. and Horne references are cited for disclosing other massaging devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
5/9/06